

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

SUSAN SEYSTER, an individual;
and JONATHAN SEYSTER, an
individual,

CASE NO. 2:19-cv-01042-DMG-JDE

STIPULATED PROTECTIVE ORDER

Plaintiffs,

VS.

UNITED SERVICES
AUTOMOBILE ASSOCIATION, a
Texas Corporation; USAA
CASUALTY INSURANCE
COMPANY, a Texas Corporation,
and DOES 1 through 50, inclusive,

Defendants.

Based on the Stipulation of the parties (Dkt. 17), and good cause appearing therefor, the Court hereby orders and finds as follows:

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1 1. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary or private information for which special protection from public disclosure
4 and from use for any purpose other than pursuing this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does
7 not confer blanket protections on all disclosures or responses to discovery and that
8 the protection it affords from public disclosure and use extends only to the limited
9 information or items that are entitled to confidential treatment under the applicable
10 legal principles.

11 2. GOOD CAUSE STATEMENT

12 This action is likely to involve trade secrets, and other valuable research,
13 development, commercial, financial, technical and/or proprietary information for
14 which special protection from public disclosure and from use for any purpose other
15 than prosecution of this action is warranted. Such confidential and proprietary
16 materials and information consist of, among other things, confidential business or
17 financial information, information regarding confidential business practices, or other
18 confidential research, development, or commercial information (including
19 information implicating privacy rights of third parties), information otherwise
20 generally unavailable to the public, or which may be privileged or otherwise
21 protected from disclosure under state or federal statutes, court rules, case decisions,
22 or common law. Accordingly, to expedite the flow of information, to facilitate the
23 prompt resolution of disputes over confidentiality of discovery materials, to
24 adequately protect information the parties are entitled to keep confidential, to ensure
25 that the parties are permitted reasonable necessary uses of such material in
26 preparation for and in the conduct of trial, to address their handling at the end of the
27 litigation, and serve the ends of justice, a protective order for such information is
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1 justified in this matter. It is the intent of the parties that information will not be
2 designated as confidential for tactical reasons and that nothing be so designated
3 without a good faith belief that it has been maintained in a confidential, non-public
4 manner, and there is good cause why it should not be part of the public record of this
5 case.

6 3. ACKNOWLEDGMENT OF UNDER SEAL FILING PROCEDURE

7 The parties further acknowledge, as set forth in Section 14.3, below, that this
8 Stipulated Protective Order does not entitle them to file confidential information
9 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and
10 the standards that will be applied when a party seeks permission from the court to file
11 material under seal. There is a strong presumption that the public has a right of access
12 to judicial proceedings and records in civil cases. In connection with non-dispositive
13 motions, good cause must be shown to support a filing under seal. See Kamakana v.
14 City and County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006), Phillips v. Gen.
15 Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), Makar-Welbon v. Sony
16 Electrics, Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective
17 orders require good cause showing), and a specific showing of good cause or
18 compelling reasons with proper evidentiary support and legal justification, must be
19 made with respect to Protected Material that a party seeks to file under seal. The
20 parties' mere designation of Disclosure or Discovery Material as CONFIDENTIAL
21 does not— without the submission of competent evidence by declaration,
22 establishing that the material sought to be filed under seal qualifies as confidential,
23 privileged, or otherwise protectable—constitute good cause.
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25 Further, if a party requests sealing related to a dispositive motion or trial, then
26 compelling reasons, not only good cause, for the sealing must be shown, and the
27 relief sought shall be narrowly tailored to serve the specific interest to be protected.
28 See Pintos v. Pacific Creditors Ass'n, 605 F.3d 665, 677-79 (9th Cir. 2010). For

1 each item or type of information, document, or thing sought to be filed or introduced
2 under seal, the party seeking protection must articulate compelling reasons, supported
3 by specific facts and legal justification, for the requested sealing order. Again,
4 competent evidence supporting the application to file documents under seal must be
5 provided by declaration.

6 Any document that is not confidential, privileged, or otherwise protectable in
7 its entirety will not be filed under seal if the confidential portions can be redacted. If
8 documents can be redacted, then a redacted version for public viewing, omitting only
9 the confidential, privileged, or otherwise protectable portions of the document, shall
10 be filed. Any application that seeks to file documents under seal in their entirety
11 should include an explanation of why redaction is not feasible.

12 4. DEFINITIONS

13 4.1 Action: Susan Seyster et al. v. USAA Casualty Insurance Company,
14 2:19-CV-01042-DMG-JDE.

15 4.2 Challenging Party: a Party or Non-Party that challenges the
16 designation of information or items under this Order.

17 4.3 “CONFIDENTIAL” Information or Items: information (regardless of
18 how it is generated, stored or maintained) or tangible things that qualify for
19 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the
20 Good Cause Statement.

21 4.4 Counsel: Outside Counsel of Record and House Counsel (as well as
22 their support staff).

23 4.5 Designating Party: a Party or Non-Party that designates information or
24 items that it produces in disclosures or in responses to discovery as
25 “CONFIDENTIAL.”

26 4.6 Disclosure or Discovery Material: all items or information, regardless of
27 the medium or manner in which it is generated, stored, or maintained (including,
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1 among other things, testimony, transcripts, and tangible things), that are produced or
2 generated in disclosures or responses to discovery.

3 4.7 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as
5 an expert witness or as a consultant in this Action.

6 4.8 House Counsel: attorneys who are employees of a party to this Action.
7 House Counsel does not include Outside Counsel of Record or any other outside
8 counsel.

9 4.9 Non-Party: any natural person, partnership, corporation, association or
10 other legal entity not named as a Party to this action.

11 4.10 Outside Counsel of Record: attorneys who are not employees of a party
12 to this Action but are retained to represent a party to this Action and have appeared in
13 this Action on behalf of that party or are affiliated with a law firm that has appeared
14 on behalf of that party, and includes support staff.

15 4.11 Party: any party to this Action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 4.12 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this Action.

20 4.13 Professional Vendors: persons or entities that provide litigation support
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 4.14 Protected Material: any Disclosure or Discovery Material that is
25 designated as “CONFIDENTIAL.”

26 4.15 Receiving Party: a Party that receives Disclosure or Discovery
27 Material from a Producing Party.

5. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial shall be governed by the orders of the trial judge and other applicable authorities. This Order does not govern the use of Protected Material at trial.

6. DURATION

Once a case proceeds to trial, information that was designated as CONFIDENTIAL or maintained pursuant to this protective order used or introduced as an exhibit at trial becomes public and will be presumptively available to all members of the public, including the press, unless compelling reasons supported by specific factual findings to proceed otherwise are made to the trial judge in advance of the trial. See Kamakana, 447 F.3d at 1180-81 (distinguishing “good cause” showing for sealing documents produced in discovery from “compelling reasons” standard when merits-related documents are part of court record). Accordingly, the terms of this protective order do not extend beyond the commencement of the trial.

7. DESIGNATING PROTECTED MATERIAL

7.1 Exercise of Restraint and Care in Designating Material for

Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items or oral or written communications that qualify so that other portions of the material, documents, items or communications for which protection is not warranted are not

1 swept unjustifiably within the ambit of this Order.

2 Mass, indiscriminate or routinized designations are prohibited. Designations
3 that are shown to be clearly unjustified or that have been made for an improper
4 purpose (e.g., to unnecessarily encumber the case development process or to impose
5 unnecessary expenses and burdens on other parties) may expose the Designating
6 Party to sanctions.

7 If it comes to a Designating Party's attention that information or items that it
8 designated for protection do not qualify for protection, that Designating Party must
9 promptly notify all other Parties that it is withdrawing the inapplicable designation.

10 7.2 Manner and Timing of Designations. Except as otherwise provided in
11 this Order, or as otherwise stipulated or ordered, Disclosure of Discovery Material
12 that qualifies for protection under this Order must be clearly so designated before the
13 material is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic
16 documents, but excluding transcripts of depositions or other pretrial or trial
17 proceedings), that the Producing Party affix at a minimum, the legend
18 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
19 contains protected material. If only a portion of the material on a page qualifies for
20 protection, the Producing Party also must clearly identify the protected portion(s)
21 (e.g., by making appropriate markings in the margins). A Party or Non-Party that
22 makes original documents available for inspection need not designate them for
23 protection until after the inspecting Party has indicated which documents it would
24 like copied and produced. During the inspection and before the designation, all of the
25 material made available for inspection shall be deemed “CONFIDENTIAL.” After
26 the inspecting Party has identified the documents it wants copied and produced, the
27 Producing Party must determine which documents, or portions thereof, qualify for
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1 protection under this Order. Then, before producing the specified documents, the
2 Producing Party must affix the “CONFIDENTIAL legend” to each page that contains
3 Protected Material. If only a portion of the material on a page qualifies for protection,
4 the Producing Party also must clearly identify the protected portion(s) (e.g., by
5 making appropriate markings in the margins).

6 (b) for testimony given in depositions that the Designating Party
7 identifies the Disclosure or Discovery Material on the record, before the close of the
8 deposition all protected testimony.

9 (c) for information produced in some form other than documentary and
10 for any other tangible items, that the Producing Party affix in a prominent place on
11 the exterior of the container or containers in which the information is stored the
12 legend “CONFIDENTIAL.” If only a portion or portions of the information warrants
13 protection, the Producing Party, to the extent practicable, shall identify the protected
14 portion(s).

15 7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
16 failure to designate qualified information or items does not, standing alone, waive the
17 Designating Party’s right to secure protection under this Order for such material.
18 Upon timely correction of a designation, the Receiving Party must make reasonable
19 efforts to assure that the material is treated in accordance with the provisions of this
20 Order.

21 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 8.1. Timing of Challenges. Any Party or Non-Party may challenge a
23 designation of confidentiality at any time that is consistent with the Court’s
24 Scheduling Order.

25 8.2. Meet and Confer. The Challenging Party shall initiate the dispute
26 resolution process under Local Rule 37-1 et seq.

27 8.3. Joint Stipulation. Any challenge submitted to the Court shall be via a

1 joint stipulation pursuant to Local Rule 37-2.

2 8.4. The burden of persuasion in any such challenge proceeding shall be on
3 the Designating Party. Frivolous challenges, and those made for an improper purpose
4 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
5 expose the Challenging Party to sanctions. Unless the Designating Party has waived
6 or withdrawn the confidentiality designation, all parties shall continue to afford the
7 material in question the level of protection to which it is entitled under the Producing
8 Party's designation until the Court rules on the challenge.

9 9. ACCESS TO AND USE OF PROTECTED MATERIAL

10 9.1 Basic Principles. A Receiving Party may use Protected Material that is
11 disclosed or produced by another Party or by a Non-Party in connection with this
12 Action only for prosecuting, defending or attempting to settle this Action. Such
13 Protected Material may be disclosed only to the categories of persons and under the
14 conditions described in this Order. When the Action has been terminated, a Receiving
15 Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party at a
17 location and in a secure manner that ensures that access is limited to the persons
18 authorized under this Order.

19 9.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
20 otherwise ordered by the court or permitted in writing by the Designating Party, a
21 Receiving Party may disclose any information or item designated
22 “CONFIDENTIAL” only to:

23 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
24 well as employees of said Outside Counsel of Record to whom it is reasonably
25 necessary to disclose the information for this Action;

26 (b) the officers, directors, and employees (including House Counsel) of
27 the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A)

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediators or settlement officers and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

10. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification

shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected. If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party

that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” attached hereto as Exhibit A.

13. INADVERTENT PRODUCTION OF PRIVILEGED OR
OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain

1 inadvertently produced material is subject to a claim of privilege or other protection,
2 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil\\
3 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
4 may be established in an e-discovery order that provides for production without prior
5 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
6 parties reach an agreement on the effect of disclosure of a communication or
7 information covered by the attorney-client privilege or work product protection, the
8 parties may incorporate their agreement in the stipulated protective order submitted
9 to the court.

10 14. MISCELLANEOUS

11 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
12 person to seek its modification by the Court in the future.

13 14.2 Right to Assert Other Objections. By stipulating to the entry of this
14 Protective Order, no Party waives any right it otherwise would have to object to
15 disclosing or producing any information or item on any ground not addressed in this
16 Stipulated Protective Order. Similarly, no Party waives any right to object on any
17 ground to use in evidence of any of the material covered by this Protective Order.

18 14.3 Filing Protected Material. A Party that seeks to file under seal any
19 Protected Material must comply with Local Civil Rule 79-5. Protected Material may
20 only be filed under seal pursuant to a court order authorizing the sealing of the
21 specific Protected Material. If a Party's request to file Protected Material under seal is
22 denied by the court, then the Receiving Party may file the information in the public
23 record unless otherwise instructed by the court.

24 15. FINAL DISPOSITION

25 After the final disposition of this Action, as defined in paragraph 6, within 60
26 days of a written request by the Designating Party, each Receiving Party must return
27 all Protected Material to the Producing Party or destroy such material. As used in this
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1 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
2 summaries, and any other format reproducing or capturing any of the Protected
3 Material. Whether the Protected Material is returned or destroyed, the Receiving
4 Party must submit a written certification to the Producing Party (and, if not the same
5 person or entity, to the Designating Party) by the 60-day deadline that (1) identifies
6 (by category, where appropriate) all the Protected Material that was returned or
7 destroyed and (2) affirms that the Receiving Party has not retained any copies,
8 abstracts, compilations, summaries or any other format reproducing or capturing any
9 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
10 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
11 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
12 reports, attorney work product, and consultant and expert work product, even if such
13 materials contain Protected Material. Any such archival copies that contain or
14 constitute Protected Material remain subject to this Protective Order as set forth in
15 Section 6 (DURATION).

16. VIOLATION

17. Any violation of this Order may be punished by appropriate measures
18. including, without limitation, contempt proceedings and/or monetary sanctions.

20. FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

22. DATED: October 17, 2019

23. 
24. JOHN D. EARLY
25. United States Magistrate Judge
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Exhibit A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

9 SUSAN SEYSTER, an individual;
10 and JONATHAN SEYSTER, an individual,

CASE NO.: 2:19-cv-01042-DMG-JDE

**AGREEMENT TO BE BOUND BY
STIPULATION AND PROPOSED
PROTECTIVE ORDER**

Plaintiffs,

VS.

14 United Services Automobile
15 Association, a Texas Corporation;
16 USAA CASUALTY INSURANCE
COMPANY, a Texas Corporation,
and DOES 1 through 50, inclusive,

Defendants.

20 I hereby attest to my understanding that information or documents designated
21 as Confidential Material or Confidential Documents and the information contained
22 therein are provided to me pursuant to the terms and conditions and restrictions of the
23 **STIPULATED PROTECTIVE ORDER** entered in the above styled case. I have
24 been given a copy, read, and understand the **STIPULATED PROTECTIVE**
25 **ORDER**; and that I agree to be bound by it, and consent to the personal jurisdiction
26 of the Court that signed the **STIPULATED PROTECTIVE ORDER**, for
27 enforcement.

28 || I further agree that I shall not disclose to others in any manner, except in

1 accordance with that **STIPULATED PROTECTIVE ORDER**, any Confidential
2 Material (or Confidential Documents) as defined in that Agreement and Order, and
3 that such Confidential Material shall be used only for the purposes of the captioned
4 legal proceeding. I understand that the unauthorized disclosure of Confidential
5 Material could result in the violation of the rights to privacy, and/or serious economic
6 harm to the party providing the Confidential Material which could continue to cause
7 harm even after the termination of that legal proceeding. I further agree and attest to
8 my understanding that, in the event that I fail to abide by the terms of that
9 **STIPULATED PROTECTIVE ORDER**, I may be subject to sanctions, including
10 sanctions by way of contempt of court, imposed by the Court for such a failure.

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12 Signature

13 Date

14 Name Printed

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